IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2665 OF 2005

Anilkumar Dhansukhbhai Tandel ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Ms Aradhana Latne for the petitioner
Mr.N.P.Pandit,A.G.P. for the Respondents

CORAM: SMT.RANJANA DESAI & A.S.OKA,JJ.
DATE : DECEMBER 2,2005

P.C.:

1. Heard learned counsel for the parties. The petitioner was admitted to the Engineering Degree Course in the Respondent No.4-College. The Petitioner was admitted to the college against the seat reserved for candidate belonging to other backward class. The petitioner was granted caste certificate dated 29th June 2005 certifying that the Petitioner is the son of Dhansukhbhai Tandel of village Navsari Borsi in District Navsari in the State of Gujrat and he belongs to Hindu Machhi caste which is recognised as other backward class in the State of Gujrat. The said certificate was forwarded to the Divisional Caste Certificates Scrutiny Committee at Mumbai. The Caste Scrutiny Committee by order dated 20th September 2005 came to the conclusion that the caste certificate of the Applicant was a caste certificate of a migrant who is not eligible for the benefits in the State of Maharashtra. Therefore, the original caste certificate was ordered to be returned to the petitioner. The challenge in this petition is

to the said order of the Caste Scrutiny Committee.

2. The learned Counsel for the Petitioner submitted that the caste Hindu Machhi has been notified in Maharashtra State as other backward class and therefore the Petitioner is entitled to benefit of reservation in the State of Maharashtra. The learned Counsel for the Petitioner submitted that the petitioner's father migrated to the State of Maharashtra from that part of the Gujrat State which was a part of erstwhile Bombay State and therefore the petitioner is an ordinary resident of Maharashtra and is entitled to benefit of declaration by the State Government of Hindu Machhi caste as other backward class. The learned A.G.P. opposed the petition by pointing out that in view of the law laid down by the Apex Court, the petitioner is not entitled to benefit of inclusion of the caste Machhi in the list of other backward classes in Maharashtra as the petitioner is a migrant.

3. We have considered the submissions. The documents on record show that the father of the petitioner was born in the State of Gujrat on 15th March 1963 i.e. after formation of the State of Gujrat. Therefore, petitioner's father is a migrant in the State of Maharashtra.

4. The caste certificate produced by the petitioner shows that the petitioner belongs to Hindu Machhi caste which is

recognized as other backward class in the State of Gujrat. The question is whether the petitioner can claim benefit of the said fact in the State of Maharashtra. This question is no more res-integra. The Apex Court in the decision reported in (1994) 5 S.C.C. page 244 (Action Committee Vs. Union of India) has considered the issue. The issue which is decided by the Apex Court is as under :

. "Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduledd Caste or a Scheduledd Tribe in relation to State A migrates to State B where a caste or tribe with the same nomencluture is specified for the purposes of the Constitution to be a Scheduledd Caste or a Scheduledd Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduledd Castes and/or Scheduledd Tribes in State B ?..."

In paragraph No.16 the Apex Court held thus :

. "We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduledd Castes/Scheduled Tribes or backward classes in a given State would depend on

> the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different."

5. The Apex Court quoted with approval the view taken by its constitutional bench in a decision reported in (1984) 3 S.C.C. page 654 (Pradeep Jain (Dr.) Vs. Union of India) holding that the Scheduled castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent to which they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the commmunity who suffer from disabilities in those areas.

6. In view of the law laid down by the Apex Court in the decision in case of Action Committee (supra) we find no fault with the view taken by the Caste Scrutiny Committee. Hence, no case is made out for interference. Petition is rejected.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)